

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCO NICOLAIDES,

Defendant-Appellant.

UNPUBLISHED

September 20, 2007

No. 271804

Oakland Circuit Court

LC No. 2006-207215-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of unarmed robbery, MCL 750.530, for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to 5 to 20 years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A loss prevention manager of a K-Mart store testified that he saw defendant in the electronics department with several expensive items in his cart, including a television, a cordless telephone, and about a dozen DVDs. Defendant placed the merchandise in a gift bag inside the cart and parked the cart by the interior cart corral area. He then left the store, ducked inside the cart corral from the exterior opening, and retrieved the cart. The manager identified himself and grabbed defendant as he tried to leave with the cart. Defendant pulled away and hit the manager in the face. The manager tackled defendant and fought to hold him until the police arrived. Defendant's van was parked "almost directly in front of the cart corral." The door was open and the engine was running.

Defendant admitted that he was shoplifting at the store. He testified that as he was trying to leave with the shopping cart, the manager tackled him from behind without identifying himself. Defendant admitted that he struggled with the manager while trying to get away, but denied hitting the manager.

Defendant first contends that the evidence was insufficient to support a conviction for robbery.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of

the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

An unarmed robbery constitutes the use of force or violence or the commission of an assault against a person “in the course of committing a larceny” of money or other property. MCL 750.530(1). An act occurs in the course of committing a larceny if it occurs in an attempt to commit the larceny, during the commission of the larceny, in an attempt to retain possession of the property, or in the escape or attempted escape after the commission of the larceny. MCL 750.530(2).

Defendant admittedly was committing a larceny when he was intercepted by the loss prevention manager. The manager testified that defendant pulled away from him and struck him. “A complainant’s eyewitness testimony, if believed by the trier of fact, is sufficient evidence to convict.” *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). “Witness credibility and the weight accorded to evidence is a question for the jury, and any conflict in the evidence must be resolved in the prosecution’s favor.” *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005). Therefore, the evidence was sufficient to support defendant’s conviction.

Defendant next contends that his sentence of 5 to 20 years in prison violates the constitutional prohibition against cruel and unusual punishment. “Defendant did not raise this issue of alleged constitutional error below and therefore it is unpreserved on appeal.” *People v Geno*, 261 Mich App 624, 626; 683 NW2d 687 (2004). We review unpreserved claims of constitutional error to determine whether a plain error affected the defendant’s substantial rights. *People v Barber*, 255 Mich App 288, 291; 659 NW2d 674 (2003).

It is undisputed that defendant’s minimum sentence of five years is within the statutory sentencing guidelines range of 43 to 172 months for an habitual offender. MCL 777.21(3)(c); MCL 777.64. Because defendant’s sentence is within the sentencing guidelines range, it is presumptively proportionate and a proportionate sentence is not cruel or unusual. *People v Drohan*, 264 Mich App 77, 91-92; 689 NW2d 750 (2004); *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). Therefore, defendant has failed to establish plain error.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto